

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 04-0323 and 04-0324
Sales and Use Tax
For the Periods 2001 - 2003

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ISSUE

I. Sales Tax—Shipping charges

Authority: IC 6-8.1-5-1(b); IC 6-2.5-2-1; 45 IAC 2.2-4-1(b); 45 IAC 2.2-4-3.

Taxpayer protests the assessment of sales tax due on shipping charges listed on its invoices to customers.

STATEMENT OF FACTS

Taxpayer has two primary lines of business. First, it is a forms distributor, acting as a retailer of various business forms that are printed by its vendors. Taxpayer outsources the order to various vendors that make the product and then ship it to Taxpayer's customers. Second, Taxpayer is an in-house print shop. It makes printed booklets, programs, continuous forms, carbonless forms, business checks, letterheads, envelopes, brochures, banners, and labels. The business activity is sales and the product is printing.

An audit was conducted and the Department noted that Taxpayer had not charged sales tax, when applicable, on shipping and handling charges. The Department assessed Taxpayer the sales tax due. Taxpayer filed a protest and a hearing was held.

I. Sales Tax—Shipping charges

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). IC 6-2.5-2-1 imposes sales tax on retail transactions made in Indiana and a retail merchant is required to collect the tax as agent for the state. Under Indiana statutes and regulations, any and all charges prior to delivery are subject to sales tax if the transaction is taxable. Taxpayer's invoices have a separate line—marked "SHIPPING & HANDLING"—for shipping and handling charges.

45 IAC 2.2-4-1(b) states that all elements of consideration are included in gross retail income subject to tax; elements of consideration include, any additional bona fide charges added to or included in the price for preparation, fabrication, alteration, modification, finishing, completion, or delivery. 45 IAC 2.2-4-3 states that separately stated delivery charges are considered part of selling at retail and are subject to sales tax if the delivery is made by or on behalf of the seller of the property. The regulation also includes guidelines based upon F.O.B. But these guidelines do not apply because Taxpayer did not separately state delivery charges on its invoices, but instead included the delivery charges under the combined line item, "SHIPPING & HANDLING." This combined charge is taxable under 45 IAC 2.2-4-1(b).

Taxpayer argued at the hearing that it can show that the shipping and handling line item charge was the pass-through cost to ship the items via UPS or other delivery carriers. While this may be true, Taxpayer listed the charge under a combined line item for preparation and delivery, not a separately stated line item for delivery only. Taxpayer rebutted by stating that it used preprinted invoices with a line item marked "SHIPPING & HANDLING." While this may be true and may be an industry standard preprinted form, Taxpayer was not bound to have to use that preprinted line, but could have separately stated the delivery charge on the invoice to indicate the charge was for delivery or freight alone.

FINDING

For the reasons stated above, Taxpayer's protest is denied.